

REMARKS

Applicant has cancelled non-elected claims 2-5, 8 and 16-26. The claims are amended to recite the species elected with traverse, SEQ ID NO: 7. A comma has been added before "wherein" as requested for claims 12-13 and 32.

The Applicant appreciates the Examiner's indication of withdrawal of the section 102(a) rejection over Walbot and Anderson et al.

The claims are rejected under section 112 as not complying with the written description requirement, the Examiner stating that no sequences which hybridize to SEQ ID NO: 7 are disclosed. The applicant traverses the rejection, but in order to expedite prosecution, and while retaining the right to present the claims in a continuing application, with this amendment the recitations to hybridization have been deleted.

The Examiner rejects claim 34 as failing to comply with the enablement requirement, stating that the recitation in the claim of an ATCC deposit requires the deposit must be available under conditions of the Budapest Treaty, and rejecting the Applicant's arguments, saying no statement in support of deposit was submitted. Applicant points out that the statement was submitted October 21, 2004, and provides with this amendment a copy of the statement. Thus it is believed the rejection is moot.

The claims are rejected under section 112 as not enabled, the Examiner claiming that the specification does not teach where to find sequences that hybridize to the sequence under the recited conditions. Applicant traverses the rejection, but in order to expedite prosecution, and while retaining the right to present the claims in a continuing application, with this amendment the recitations to hybridization have been deleted.

The claims are rejected under section 112 as indefinite for failing to particularly point out and claim the subject matter of the invention. In regard to claim 3, the Examiner finds indefinite recitation of the sequences and those which hybridize to same. With the amendment deleting such language, it is believed the rejection is rendered moot.

Claims 3, 12 and 13 are rejected as indefinite for reciting "impacting". Since reference to a method of "impacting fertility of a plant" is unnecessary for claim 3, that language is deleted

and it is believed the rejection is rendered moot. In regard to claims 12 and 13 the Examiner states it is unclear what is done to impact a gene, the Examiner stating that the gene may not even be in a plant. The Examiner's rejection is traversed, in that the specification describes impacting, and both claims 12 and 13 recite that the nucleotide sequence is "in the plant." To expedite prosecution, and for clarity, the Applicant has amended claims 12 and 13 to recite a method of "producing a male sterile or male fertile plant" which comprises "repressing or increasing expression of" the nucleotide sequence. As discussed in the specification, a gene impacting male fertility can be used to control male fertility in a wide variety of processes. Examples include, among others, silencing the gene, and introducing the gene linked to a controllable promoter (see page 4, lines 4-20 including reference to patent no. 5,478,369, incorporated by reference) and where the plant is constitutively sterile, becoming fertile only when the promoter is induced and the male fertility gene expressed; where expression of the gene is prevented by introducing an antisense to the gene (page 3, lines 25-31); and where expression of the gene is inhibited by use of a repressor gene (page 4, lines 1-3). The expression of the nucleic acid sequence is critical to male fertility in plants, and male fertility can be mediated through any variety of means of impacting that expression (See page 4, lines 21-30). An example of increasing and repressing expression is shown in Example 5. Thus it is believed with this amendment the claim language is clarified and the rejection rendered moot.

Further, the additional indefiniteness rejection of claim 13 as reciting the amino acid sequences and sequences that hybridize to the sequences are also rendered moot by deletion of this language.

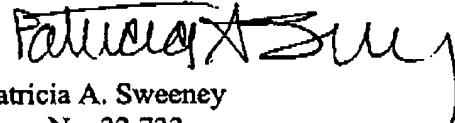
Dependant claim 14 is provided with antecedent basis for "the sequence expression" by the addition in claim 12 of "repressing or increasing expression" of the sequence.

In claim 31, the term "cells" is made singular and an article is added to the beginning of the claim, as requested.

The claims are rejected under section 102(b) over Albertsen since they recite sequences which hybridize to the sequences shown. Applicant traverses the rejection, but in order to expedite prosecution, and while retaining the right to present the claims in a continuing application, with this amendment the recitations to hybridization have been deleted

Since the amendment does not enter any new matter and adopts the Examiner's proposals, canceling non-allowable claims, and places the claims in condition for allowance, entry of the amendment is respectfully requested, and reconsideration and allowance of the claims.

Respectfully submitted,



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